

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
)
v.) CASE NO. 2:06CR81-VPM
) [WO]
CECELIA JOHNSON)

ORDER ON MOTION

On 7 July 2006, the defendant filed an Unopposed Motion for Continuance of the trial in this case (Doc. # 13). While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985), the court is, of course, limited by the requirements of the *Speedy Trial Act*, 18 U.S.C. §3161 ["The Act]. The Act provides generally that the trial of a defendant in a criminal case shall commence within 70 days of the latter of the filing date of the indictment or the date the defendant appeared before a judicial officer in such a matter. 18 U.S.C. §3161(c)(1). *See United States v. Vassar*, 916 F.2d 624 (11th Cir. 1990). The Act excludes from this 70-day period any continuance that the judge grants "on the basis of [her] findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial". 18 U.S.C. §3161(h) (8) (A).

In this case, the defendant has successfully applied for pretrial diversion from the United States Attorney. The additional approval process includes referral to the United States Probation Office for further completion of documents. Thus, the prosecution, including a trial, may be abated. The defendant impliedly alleges, however, that this process

may extend beyond the current trial date of 17 July 2006.

There is only one defendant in this case, and the government does not object to a continuance. Moreover, the defendant filed her Waiver of Speedy Trial on 16 May 2006 (Doc. # 11). The court concludes that the ends of justice served by continuing this case outweigh the interests of the public and the defendant in a speedy trial.

Accordingly, it is hereby

ORDERED that the motion for continuance filed by the defendant be GRANTED and that this cause be set on the misdemeanor term commencing 11 September 2006 with jury selection before Judge Susan Russ Walker. The trial is set to immediately begin following jury selection before the undersigned.

DONE this 11th day of July, 2006.

/s/ Vanzetta Penn McPherson
VANZETTA PENN MCPHERSON
UNITED STATES MAGISTRATE JUDGE